



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1213]

Certain Light-Emitting Diode Products, Fixtures, and Components Thereof; Commission Determination to Review in Part A Final Initial Determination Finding a Violation of Section 337; Request For Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to review in part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding a violation of section 337 by the accused products of respondent RAB Lighting Inc. (“RAB”) of Northvale, New Jersey. The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 17, 2020, based on a complaint filed on behalf of Ideal Industries Lighting LLC d/b/a Cree Lighting (“Cree”) of Durham, North Carolina. 85 FR 50047-48 (Aug. 17, 2020). The

complaint, as supplemented, alleges violations of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light-emitting diode products, fixtures, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 8,403,531 (“the ’531 patent”); 8,596,819 (“the ’819 patent”); 8,777,449 (“the ’449 patent”); 9,261,270 (“the ’270 patent”); and 9,476,570 (“the ’570 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named RAB as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation. The Commission previously terminated the following claims from the investigation: (1) claims 1-9 and 11-14 of the ’449 patent; (2) claims 3-12 of the ’270 patent; and (3) claims 2, 6-9, and 11-24 of the ’570 patent. *See* Order No. 25 (May 5, 2021), *unreviewed by* Comm’n Notice (May 21, 2021).

On August 17, 2021, the ALJ issued the final ID finding a violation of section 337 based on infringement of the asserted claims of the ’270 and ’570 patents. The ID finds no violation of section 337 with respect to the ’531 and ’819 patents based on patent-ineligible subject matter, lack of enablement, and lack of written description. The ID also finds no violation with respect to the ’449 patent. The ALJ recommended, should the Commission find a violation, issuing a limited exclusion order directed to RAB’s infringing products and a cease and desist order directed to RAB and requiring a bond in the amount of five percent for importation of infringing articles during the Presidential review period.

On September 2, 2021, RAB and Cree petitioned for review of certain aspects of the final ID. Specifically, (1) RAB petitions for review of the ID’s findings regarding claim construction and invalidity with respect to the ’270 patent and infringement with respect to the ’570 patent; and (2) Cree petitions for review of the ID’s findings regarding invalidity and patent-ineligible subject matter with respect to the ’531 and ’819 patents. On September 13, 2021, RAB and Cree each filed a response in opposition to the other party’s petition for review.

The Commission received no public interest comments from the public in response to the Commission's Federal Register notice seeking comment on the public interest. 86 FR 47146-47 (Aug. 23, 2021). On September 16, 2021, Cree and RAB submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the parties' briefing, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the ID's finding that: (1) the asserted claims of the '531 and '819 patents are invalid due to patent-ineligible subject matter, lack of enablement, and lack of written description; and (2) the '819 patent is prior art to claims 1, 10-12, and 26 of the '531 patent. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S.

consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, bonding, and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on **November 8, 2021**. Reply submissions must be filed no later than the close of business on **November 15, 2021**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR

210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1213) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on October 25, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: October 25, 2021.

Lisa Barton,
Secretary to the Commission.

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